

SELECT BOARD

Minutes of the meeting of August 23, 2023 at 11:00 AM. The meeting took place via remote participation via Zoom Webinar. Members of the Board present were Dawn Holdgate, Tom Dixon, Brooke Mohr and Dr. Malcolm MacNab. Matt Fee joined the meeting later as noted.

I. CALL TO ORDER

Chair Holdgate called the meeting to order at 11:01 AM.

II. REVIEW REVISED SHORT-TERM RENTAL WARRANT ARTICLES FOR NOVEMBER 7, 2023 SPECIAL TOWN MEETING WARRANT.

Chair Hill recused herself from the discussion of short-term rental (STR) articles and turned off her camera. Vice Chair Mohr led this section of the meeting. Attorney John Giorgio of Town Counsel's office reviewed changes made since the Board met on August 16, noting he has rearranged the articles, putting the General Bylaw Chapter 123 Regulations first as Article 1, then zoning as Article 2.

Matt Fee joined the meeting at 11:04 AM.

Mr. Giorgio said that based on feedback he has received from former members of the Short-Term Rental Work Group (STRWG), he has made Articles 1 and 2 dependent on each other so that one cannot be adopted without the other. Mr. Fee said he feels that is a mistake and if the zoning article is not adopted, he thinks the general bylaw could still be in place. Mr. Giorgio said the original rationale was not to link the articles together for the reason Mr. Fee stated, noting the zoning is going to be the "bigger lift" not only because it designates STRs as a by-right use, but also because it requires a 2/3 vote. Ms. Mohr asked what the legal implication of not having it as a dated use in zoning and regulating it, can it be enforced. Mr. Giorgio responded yes, until a judge says otherwise since the Town is currently taking in litigation the stance that STRs are an allowed use in all zoning districts. He said that the use is in zoning but the regulations are in the general bylaw, and if the zoning article fails, he suggests trying again at the spring town meeting. Ms. Mohr asked if a judge deems that STRs are not an allowed use based on a result of one of the pending litigation cases, does that change the enforceability of Article 1. Mr. Giorgio said no, Article 1 would remain fully enforceable, adding that the regulations would still be in place but the use would not be allowed. Mr. Giorgio said that if the Town does get an adverse court decision, he would recommend appealing the decision and it would be some time before it would be resolved. Mr. Mohr said she agrees with Mr. Fee in that she feels it would be helpful to have the general bylaw in place to get the Attorney General's ruling and get the appropriate infrastructure in place for enforcement, regardless of what happens with zoning. She asked for feedback from former members of the STRWG on the rationale to link the two articles together. Former STRWG member Kathy Baird said she always viewed this as a package and feels it needs to be all or nothing. She said as the representative for Nantucket Together, the linkage was the lynchpin and without the linkage, she would have had to vote no on the article which would have resulted in the STRWG not coming to consensus and not presenting any articles for fall town meeting. Former STRWG member Peter Kahn and representative of the Advisory Committee of Non-Voting Taxpayers, said he is comfortable not having the two articles linked with the caveat that Article 1 does not pass, then no vote should be taken on Article 2. Former STRWG member Jim Sulzer agreed with Mr. Kahn. Mr. Giorgio said he doesn't feel it is possible to prohibit a vote on Article 2. He said that if Article 1 fails, then someone should move not to adopt Article 2 and if the motion does not pass then anyone can move to amend the article. Some discussion followed. Mr. Giorgio said he can take out the contingency language in Article 1 but leave it in Article 2. Mr. Dixon agreed with Mr. Fee and Ms. Mohr. He said making the two articles contingent on each other would be a waste of good work. Mr. Fee moved to unlink the article,

putting the General Bylaw first as Article 1 and keeping the contingency language in Article 2 only; Mr. Dixon seconded; by roll call vote: Ms. Mohr – Yes; Mr. Dixon – Yes; Mr. Fee – Yes; Dr. MacNab – No; so voted. Mr. Fee said he feels we can get to the zoning goal but these need to be taken one at a time.

Mr. Giorgio reviewed the addition of the language, “or other legal entity” to the definition of Operator. Mr. Fee expressed concerns about a lack of language regarding lessee and sublessee as natural persons so as to not leave the Town legally exposed. Mr. Kahn said the STRWG wants to be sure that anyone who owns or operates a STR is covered by the rules. He said he is comfortable with the language as written. Mr. Fee clarified that he is worried someone who long-term rents a house then turns around and subleases the premises as a STR. Mr. Giorgio suggested adding language to subparagraph “L” such as any dwelling unit subject to a lease with a change of occupancy in excess of 31 days shall be prohibited from short-term renting that dwelling unit. Mr. Fee said he would like to hear from the STRWG. Kathy Baird said that in Article 39 of the 2022 Annual Town Meeting, where it defined who could register a STR, it could be the owner or someone who manages the rental. Since that definition was subject already to the change of occupancy, the work group didn’t specifically address lessee or sublessee. She noted it is permitted now. Jim Sulzer said he agrees with Mr. Fee and the hope was that what was there would prevent it, but he thinks it’s a good idea to go a step further with the language Mr. Giorgio proposed. Mr. Giorgio suggested adding the language, “or other legal entity” in section 123-3(A), in addition to the definition of Operator. Board consensus was to do so. Mr. Giorgio also suggested additional language in subsection “L” at the end of the paragraph, that “no dwelling unit that is subject to a lease shall be eligible to receive a certificate of registration for a Short-Term Rental”. Mr. Fee so moved to add the language to “L” as proposed; seconded by Mr. Dixon; by roll call vote: Ms. Mohr – Yes; Mr. Dixon – Yes; Mr. Fee – Yes; Dr. MacNab – Yes; so voted. Mr. Fee commented that this can be adjusted slightly at town meeting if there is valid reasoning or argument to do so.

Mr. Giorgio reviewed a spelling correction to subsection F. He then reviewed comments made by former members of the STRWG to Article 1, subsection “M” to make it in compliance with the requirements in subsection “H” which he already added language to regarding the “grandfathering” provision. Mr. Kahn said this is all contingent on what the Select Board intended, but the STRWG understanding is that any owner or operator who wasn’t previously registered or could prove it had operated as a STR during a third quarter between 2019 to 2023 would only be allowed to have four rental contracts, not nine. Ms. Baird said the work group tried to not take away or prevent future use of the property for STR use and new users would be able to have 9 rental contracts. Mr. Kahn reiterated that the current language of subsection “M” is in conflict with the current language of “H”. Mr. Sulzer said Ms. Baird is correct that the STRWG’s original intent was to allow new STR owners and operators to have 9 rental contracts, but that changed following the Select Board’s discussion last week. He said as a result the requirements were suggested to be tightened so that not everyone starts with 9 contracts, but rather 4 contracts unless there is a hardship. Ms. Mohr – two options – only allowing 9 contracts for those who have rented prior and are registered, alternative is to protect the 9 contracts for anyone who owns a home on Nantucket. She asked what the intent of the Select Board is. Mr. Fee said only those are protected with 9 contracts are those who can prove they already qualify under subsection “H”. Ms. Mohr, Dr. MacNab and Mr. Dixon agreed. Ms. Mohr asked if this can be accomplished. Mr. Giorgio said he can revise subsection “M” to make this happen. He then reviewed the language in subsection “J” to make sure the language is the Select Board’s intent. Mr. Fee raised concerns about members of an LLC changing to non-family members but the name of the LLC stays the same. Former STRWG member John Kitchener expressed concerns about an LLC being made up of natural people who are investors and not family members. Mr. Sulzer agreed with what Mr. Kitchener said and what Mr. Fee is concerned with. Mr. Giorgio said changes would have to be made to subsection

“H” that any changes to an LLC that aren’t family reduces the number of contracts from 9 to four. Mr. Dixon moved to add such language to subsection “H”; seconded by Mr. Fee. By roll call: Ms. Mohr – Yes; Mr. Dixon – Yes; Mr. Fee – Yes; Dr. MacNab – Yes; so voted. Mr. Giorgio said he will have to “massage” the language a little bit.

Chair Holdgate returned to the meeting at 12:05 PM.

Ms. Mohr moved to adopt the warrant as amended by discussion and voted today, subject to Town Counsel’s final language; seconded by Mr. Fee; by roll call vote: Chair Holdgate – Yes; Ms. Mohr – Yes; Mr. Dixon – Yes; Mr. Fee – Yes; Dr. MacNab – No; so voted.

III. ADJOURNMENT

Ms. Mohr moved adjournment at 12:06 PM; seconded by Mr. Fee; by roll call vote: Chair Holdgate – Yes; Ms. Mohr – Yes; Mr. Dixon – Yes; Mr. Fee – Yes; Dr. MacNab – Yes; so voted.

Approved the 6th day of September 2023.

**SELECT BOARD
AUGUST 23, 2023 – 11:00 AM
REMOTE PARTICIPATION VIA ZOOM WEBINAR
NANTUCKET, MASSACHUSETTS**

List of documents used at the meeting:

- II. Draft Warrant for 11/7/2023 Special Town Meeting as of 8/23/2023